

## **Sec. 4.06.010 Technical regulations**

### **(e) Protected use setback from wells.**

(1) No building permits for new construction of a protected use shall be issued for the area within a 600-foot radius of a permitted drill site, until the well has been plugged and abandoned in accordance with the requirements of the Texas Railroad Commission and this article. The radius of the restricted area shall be calculated from the well bore, in a straight line, without regard to intervening structures or objects.

(2) The distance set out in subsection (1) may be reduced, but never less than two hundred feet (200'), from any protected use, only with a waiver granted by the city council after a public hearing.

### **(3) Procedure and standards for a protected use setback waiver.**

(A) Within forty-five (45) days of receipt of a complete application, which shall include a site plan depicting any proposed new construction or new development, and a request for a setback waiver, the gas inspector shall place the matter on the city council agenda for a public hearing and give notice by mail of the time, place and purpose thereof to the applicant and any other party who has requested in writing to be so notified. The 45-day period shall not begin to run until the applicant has provided the gas inspector with a complete application package.

(B) At least twenty (20) days, and no more than thirty (30) days, prior to the date of the public hearing before the city council for a setback waiver, the city shall notify, at the applicant's expense, each surface owner of property, as shown by the current tax rolls of the city, within one thousand feet (1,000') of the permitted drill site, of the hearing location, date and time. The notice shall also contain information describing the new construction or new development and contact telephone numbers for city staff and the applicant. Such notice shall be deposited properly addressed and postage paid, in the United States mail. Notice also shall be sent by the applicant to all registered neighborhood associations within one thousand feet (1,000') of the permitted drill site. Upon request, the city shall provide the applicant with a list of all registered neighborhood associations within one-half mile of the proposed drill site. Notice to the registered neighborhood associations must contain language encouraging the board of directors to notify their members of the application and contain the information set forth in subsection (C) below.

(C) At least fifteen (15) days, and no more than twenty (20) days, prior to the date of the public hearing before the city council for a setback waiver, the applicant shall publish a copy of the notice, as outlined below, at the applicant's expense, in one issue of the local section of a newspaper of general circulation in the city, for ten (10) consecutive days. An affidavit by the printer or publisher of

the newspaper indicating publication of the notice shall be filed with the application and will be prima facie evidence of such publication. The notice shall read as follows:

Notice is hereby given that, acting under and pursuant to the Ordinances of the City of Joshua, Texas, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ filed with the Gas Inspector of the City of Joshua, an application for a gas well setback waiver upon property located at \_\_\_\_\_, Johnson County, Joshua, Texas, more particularly shown on the map of record in Volume \_\_\_\_\_, Page \_\_\_\_\_, Plat records of \_\_\_\_\_ County, Texas or per Tax Tract Number \_\_\_\_\_ County, Texas. The City Council will conduct a public hearing on the request for said permit on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_ o'clock \_\_.m. in the City Council Chambers located at 101 S. Main St., Joshua, Texas.

(D) At least twenty (20) days prior to the date of the public hearing before city council for a setback waiver, the applicant shall, at the applicant's expense, erect at least one sign, no less than three feet by three feet, upon the premises upon which a setback waiver has been requested. Where possible, the sign or signs shall be located in a conspicuous place or places upon the property at a point or points nearest any right-of-way, street, roadway or public thoroughfare adjacent to such property. The gas inspector may require additional signage if the premises fronts on more than one right-of-way, street, roadway, or public thoroughfare.

(i) The sign(s) shall substantially indicate that a setback waiver has been requested and state the date, time and place of the public hearing, and shall further set forth that additional information can be acquired by telephoning the applicant at the number indicated on the sign.

(ii) The continued maintenance of any such sign(s) shall not be deemed a condition precedent to the holding of any public hearing or to any other official action concerning this article.

(iii) The sign shall remain posted on the premises until such time as the city council has finally acted upon the setback waiver.

(E) After a setback waiver application is submitted, the gas inspector may evaluate the public impact of the proposed activity. The gas inspector may consider the proposed site and recommended restrictions or conditions, including screening, landscaping, special safety equipment and procedures, recommended noise reduction levels, and any other requirements the gas inspector deems appropriate. The recommendation shall be submitted to the city council for consideration prior to the public hearing along with evidence that timely actual notice of the hearing was given to all persons as required by this article.

(F) At the public hearing and before the city council considers the merits of the application and the recommendations of the gas inspector, the applicant shall provide evidence of a certificate of publication establishing timely publication of the notice of the hearing, and that the applicant has otherwise complied with or satisfied all other requirements of this article.

(G) The burden of proof on all matters, except notice, considered in the hearing shall be upon the applicant.

(H) The city council shall review the application and any other related information. The city council shall consider the following in deciding whether to grant a setback waiver:

(i) Whether there are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the vicinity;

(ii) Whether a variance is necessary to permit the applicant the same rights in the use of his property that are presently enjoyed by other similarly situated properties, but which rights are denied to the property on which the application is made;

(iii) Whether the granting of the waiver on the specific property will adversely affect any other feature of the comprehensive master plan of the city;

(iv) Whether the variance, if granted, will be of no material detriment to the public welfare or injury to the use, enjoyment, or value of property in the vicinity;

(v) The particular location and the character of the improvements contemplated;

(vi) Whether the granting of the setback waiver is or would conflict with the orderly growth and development of the city;

(vii) Whether the granting of the setback waiver is or would be consistent with the health, safety and welfare of the public;

(viii) The approval of a setback waiver is consistent with protecting the site's ecological integrity and environmental quality, including protection of surface and ground water sources, of potentially impacted environmentally sensitive areas; and

(ix) Whether there is reasonable access for city fire personnel and firefighting equipment, including the ability to safely evacuate potentially affected residents.

(I) The city council may require an increase in the applicant's proposed setback from any residence, religious institution, public building, hospital building, school or public park, or require any change in operation, plan, design, layout or any change in the on-site and technical regulations in this section and [section 4.06.011](#) of this article, including fencing, screening, lighting, delivery times, noise levels, tank height, or any other matters reasonably required by public interest.

(J) The city council may accept, reject or modify the application in the interest of securing compliance with this article or other city ordinances and/or to protect the health, safety and welfare of the community.

(4) Prior to the issuance of a building permit by the city for any residence, religious institution, public building, hospital building, school or habitable structure, the owner or developer of any lot or tract for which a building permit is sought shall have the following notation placed on any deed, plat or site plan for said lot or tract: "This tract or lot is located less than six hundred feet (600') from an existing gas well and is subject to the Code of Ordinances of the City of Joshua, Texas."

(Ordinance 699-2017 adopted 11/16/17)

(5) In the event no building permit for any new construction of any residence, religious institution, public building, hospital building, school or habitable structure is issued for the area within a 600-foot radius of a permitted drill site or public infrastructure construction has not begun within twelve (12) months of the date of the city's approval of a setback waiver, the waiver shall expire automatically. (Ordinance 759-2019 adopted 6/20/19)